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NO. 75-1355

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

KEVIN J. BURNS, Commissioner of the Department of Social Services of the State of Iowa, et al.;

Appellants,

vs.

KAREN HEIN, ET AL.

Appellees.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA

STATE APPELLANTS' REPLY TO APPELLEES' BRIEF

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DISCUSSION

The theme throughout Appellee Hein's Brief, commencing with paragraph 1 of "Questions Presented" on page 2 is that the Secretary of Agriculture's Regulation substantially "reduced [her] Federal Food Stamp assistance" because she received $44 per month from the State of Iowa as a "training allowance".

But this contention is not true as shown by the record.

What actually occurred was that, because she received the $44.00 from the State of Iowa in Iowa's Individual Training program, her "cash discount" for food-stamps was reduced by $12.00 per month under the challenged Federal regulation in the Food Stamp Program, i.e., she paid $12.00 more for the same quantity of food stamps.

In her complaint, she recites that in September, 1972, she was approved for Iowa's training program and that "Plaintiff has been paying an additional $12 per month to buy her monthly amount of food stamps". (Jt. App. p. 19). In her affidavit, Appellee Hein alleges she is receiving training as a student nurse under the individual training program and further, under oath, states that she purchases food stamps "for which she pays $58 a month." The affidavit further reads that "the purchase price of the amount of food stamps Mrs. Hein was allotted to secure each month was increased by $12, raising said price from $46 to $58 per month." (Hein affidavit -- Hein Brief pp. 1b-2b, para. 4,5, and 9).

Also in her affidavit, Appellee Hein acknowledges receiving an AFDC grant as her principal source of income. This grant included shelter and food allowances. (The ADC grant was properly adjusted to reflect rental income.)

However, the $44.00 training allowance in no way reduced her ADC grant, *and more importantly, receipt of the training allowance in no way reduced the quantity of food stamp assistance.* **She bought the same maximum quantity of food stamps, $94.00 worth, (but at an increased $12.00 cost) after she received the $44 as she had been buying before.**

This case, then, supports Appellant State's contention that the Secretary's Regulation under attack achieved the goal set

forth in the Food Stamp Act in that, here, the most extremely impoverished ADC recipient and State sponsored "trainee" (assuming, although the record does not show, actually spent all her flat "training allowance" on school transportation), was financially able to *and did buy her maximum food stamp allotment*. She thereby *personally* met the Food Stamp Act goal by enjoying the "opportunity to obtain a nutritionally adequate diet". (7 U.S.C. §2014 (a)).

Thus, appellee Hein's contention that the Regulation "substantially reduced Federal Food Stamp assistance to a household solely on the basis of a household member's receipt of a government allowance for necessary commuting in connection with a government sponsored program" (Hein Brief p.2) is factually not true.[1]

If appellee Hein is not factually disadvantaged to any substantial degree by the Regulation, certainly the trainees at the other end of the spectrum, being those who spend little, if any, of their training allowance" for travel or other "necessary" school expenses (since tuition, books, fees and child care costs are paid in addition to the flat allowance), are certainly not disadvantaged by a denial of an opportunity to obtain a

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[1] To attempt to explain how this Appellee was financially able to pay for her "full allotment" of food stamps after she began receiving the $44 monthly training allowance, appellee Hein may point to the stipulation signed by her attorney of record, Jt. App. 26. The record is that appellee Hein was never called to testify so she was never under oath during the trial. What appears in the stipulation her attorney signed for her was that "if "Ms. Hein were called to testify," she would testify as therein stated. However, under oath by affidavit and in her Complaint (see supra p. 2 hereof) she repudiated the stipulated allegation that "she had been forced to . . . (e) Buy less than her allotted food stamp coupons." (This impeachment of that material statement throws a cloud on the other matters it is claimed she would testify to if called as a witness.)

"nutritionally adequate diet." Without any disparaging inferences intended, appellant State suggests that what Appellee seems to be seeking is an *individualized Regulation*, for, while she does not so state in her brief, exactly, the thrust of her attack could be construed to be a challenge to both the statutory and constitutional right of Congress to authorize, and that of a Federal Secretary to promulgate, *broad Regulations*, including averaging in the welfare field. But this Court has answered such questions in *Dandridge v. Williams*, 397 U.S. 471, *Jefferson v. Hackney*, 406 U.S. 535, and, lately, in *Mathews v. Lucas*, (1976) 96 S. Ct. 2755 ——U.S. ——.

Appellee Hein claims that the challenged regulation "Undeniable discouraged participation in state sponsored training programs by substantially reducing recipients' food stamp assistance solely on the basis of allowances for necessary educational travel that made it possible for them to participate in such programs." Continuing, she states "that this was a clear violation of 7 U.S.C. §2014 (c)'s indication that education and training is not to be discouraged by the denial of food stamp benefits." (Hein Brief p. 18).

The most obvious answer is, that the Regulation does not have the effect of discouraging participation in both the food-stamp program and Iowa's Individual training program. Since the filing of this complaint, 3,407 persons have had the advantages offered by Iowa's program, including appellee Hein, who was not discouraged from completing her schooling by reasons of said Regulation. [2]

[2] Also, food stamp recipients have not been discouraged from taking advantage of the other training programs, State or Federal, being offered. Since 1973, when this Petition was filed, there have been at some time or other, fourteen different available training programs in the State of Iowa alone. Still in operation are seven (7), to-wit: Individual Education and Training Plan Programs, WIN (Work Incentive in the ADC program), Job

Continued page 5

As noted by Appellee Hein, (Hein Brief p. 16) Congress set forth its purposes and objectives in 7 U.S.C. §2013 (a). Among those stated purposes and objectives there is no mention of fostering government educational or training programs.

It is too much to infer, as appellee Hein does, that in section 7 U.S.C. §2014 (c) there are "provisions evidencing Congressional intent to encourage education and training toward self-support." 7 U.S.C. §2014 (c) merely excuses food-stamp candidates, enrolled in a legitimate training program with bona fide intentions, from being denied food stamps if they are not either working or attempting to secure employment. The legislative history behind that regulation shows that Congress did not want a Regulation that could serve to encourage some individuals from unduly prolonging their education "in a multiplicity of subjects". (See full discussion of legislative history, p. 8, State Appellants' Brief.)

Appellee Hein states that, "For those who are covered by the District Court's Order, the Appellants' administrative burdens are considerably less onerous with regard to their necessary travel allowances than with regard to education-related child expenses." (Hein Brief p. 29) As will be seen by references to Page XIII-8-4 in both the 1972 and the current 1974 Employee's Manual of the Iowa Department of Social

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[2] Continued from page 4

Corp Program, Veterans Administration Training Program, GI Benefits Program, Vocational Rehabilitation and CETA (Comprehensive Employment and Training Act) currently operated under the Iowa Governor's office and which incorporated the other seven, to-wit: New Careers Program, Operation Mainstream Program, MDTA Program (Manpower Development and Training Act) NAB-JOBS (National Alliance of Businessman - jobs), Occupational Upgrading Program, Concentrated Employment Program, New Horizons Program.

Services,[3] *the vendor of child care services* (and not the food-stamp worker) is the person required to make the day-by-day computation of child care costs for each month. Thus, the food stamp worker need only record the vendor's figure for child care as opposed to personally computing and verifying the actual day-by-day travel expenses.

Continuing with erroneous conclusions, Appellee Hein states that "the District Court's Order does not require payment of any additional funds for Individual Education and Training Plans, and has no other impact on the program under which such plans are funded" (Hein Brief p. 29).

The Court Order does affect the State's treasury and does have an impact on Iowa's individual training program.

First, as to the retroactive aspect, Appellant State points out that since the time the complaint was filed in 1973 it has paid $44 or as now, $60 per month to each trainee. Thus, the State has already passed on to the trainee the administrative costs that would have been incurred in making detailed accountings of travel costs. Paying such administrative savings to the trainees served as an incentive for the trainee's participation in Iowa's program.[4] Now, under this Order, the

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[3] Iowa Department of Social Services Employees' Manual, Page XIII-8-4 (as of February 11, 1972 and as of January 15, 1974, Appendix 1a.

[4] Appellee misconceives the reason for granting the "training allowance" in asserting that it is State's administrative judgment that participants in the program would have additional expenses of that magnitude. (Hein Brief p. 13 and 36). Obviously, some will have little or no additional training expenses since tuition and other fixed fees, child care costs, etc., are paid by the State in addition to the allowance.

Court would have the State pay both administrative costs *and* the incentive payment.[5] This requires "double payment" which is inequitable, and requires undue hardship upon the State. "Duplicated taxes, or burdens that approach them, are recognized hardships that government, state or national, may properly avoid."[6] *Steward Machine Co. v. Davis*, 301 U.S. 548 at 589.

Second, as to the future operation of Iowa's Individual Training Program and the future operation of the food-stamp program in Iowa, for persons simultaneously participating in both, there is an additional and unanticipated burden upon the State, financial and otherwise. Under the Court Order, the State would be required to pay one-half of the costs in computing and verifying daily travel expenditures while at the same time paying a "training allowance" in lieu of administrative costs.

This court-ordered requirement could discourage the State of Iowa from passing on to the trainee the administrative costs

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[5] Further, as to the retroactive aspect of the Order, the State points out the following, Appellee Hein claims that re-computing the food stamp costs for each month are administrative costs "of the kind which states much expect to incur as a result of their participation in the Food Stamp Program." She also claims they are "merely ancillary to a valid prospective order, and are clearly anticipated by the Food Stamp Act." (Hein Brief p. 42). This is obviously not true. In the years the original computation was made, and from appropriations made by the Iowa legislature in those years, the State paid the anticipated administrative costs. *This Order calls for additional sums from the State treasury for re-computations.*

[6] Iowa has had 3,407 trainess in its program since 1973 which records would need be compared with current food stamp files of approximately 40,000. Once identified, it would be necessary to re-calculate the certification for each month after ascertaining the actual daily expenses for each trainee food-stamp recipient and make the verification required in the food-stamp regulations. One State official believes it would take 27,256 man hours, or 3,407 days averaging 8 hours per day per case (or a ten year project for a single staff member) to comply with the Court Order.

as an incentive to participate in its training program in the future. And, the trainee may be discouraged from participating in Iowa's training program if she or he does not receive the unitemized allowance. Likewise, and equally as important, the trainee could be discouraged from participating in the food-stamp program if required to keep records of verified actual daily travel expenses.

The Regulation here, contrary to the effect of the Court Order, would preserve the status quo of Iowa's individual training program. A regulation in a similar situation, *Richardson v. Belcher*, (1971) was said to be rationally based so as not to interfere with "the efforts of the states which might lead to the gradual weakening or atrophy of State programs." 404 U.S. 78 at 84.

CONCLUSION

State Appellants respectfully pray that the Secretary's challenged Regulation be declared valid under congressional intent and under the language of the Food Stamp Act; and pray that it be declared constitutionally permissible. They further pray that this Court vacate the decision and order of the Court below in both its prospective and retroactive aspects.

Respectfully submitted,

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APPENDIX

IOWA DEPARTMENT OF SOCIAL SERVICES

EMPLOYEES' MANUAL, Page XIII-8-4

(as of February 11, 1972)

Child care allowance — this allowance should follow the WIN guidelines. The day care *vendors will submit their request for payment* to the counties on Vendors Request for WIN Day Care Payment, Form WI-5101-5 (revised 4-6-71).

(as of January 15, 1974)

INDIVIDUAL EDUCATION AND TRAINING PLAN

Child Care

Child care services must be available and provided to all individuals requiring child care prior to participation in an Individual Education and Training Plan. The caseworker responsibilities regarding child care are outlined in Chapter 5 — Child Care of this section. Please note the following exception: *Individual Education and Training Plan Vendor's Request for Day Care Payment will be listed and submitted to the State Office for payment* on the Certification for Day Care Payments, Form AA-2239-0 (Yellow form). Instructions for the use of this form appear in the Appendix. (Emphasis added)